

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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General Contact Number: 571-272-8500

Mailed: December 9, 2021

*In re Jeanette Conrad-Ellis*

Serial No. 90002764

Filed: 6/15/2020

**Amy Matelski, Paralegal Specialist:**

This case now comes up for consideration of Applicant's "MOTION TO CLARIFY THE RECORD REGARDING THE STATUS OF ADDITIONAL EVIDENCE" filed December 6, 2021. By way of background, on October 25, 2021, the Board granted Applicant's request for remand (filed October 19, 2021) to consider additional evidence. On November 19, 2021, the Examining Attorney issued an Office Action continuing the final refusal because "the request did not: (1) raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s)." The Board assumes, based on this language, that the Examining Attorney considered Applicant's additional evidence.

However, by its present motion, Applicant states that “[t]he examining attorney communicated to applicant on December 3, 2021 that he does not consent to entry of the Additional Evidence into the record.” The record is devoid of any note to the file or written communication to this effect. Trademark Rule 2.191 states: “All business with the Office must be transacted in writing. The action of the Office will be based exclusively on the written record. No consideration will be given to any alleged oral promise, stipulation, or understanding when there is disagreement or doubt.”

Applicant’s above quoted representation and the lack of written record now raises the question of whether the Examining Attorney did in fact consider the new evidence per the Board’s remand order. To be clear, the evidence that was attached to the October 19, 2021 request for remand was made of record when the Board granted the request for remand on October 25, 2021. See, e.g., *In re AC Webconnecting Holding B.V.*, 2020 USPQ2d 11048, at \*1 & n.3 (TTAB 2020) (Board sua sponte remanded applications to the examining attorney to consider evidence submitted by applicant with its reply brief because the evidence was responsive to a previous Rule 2.61 request for information by the examining attorney, and applicant submitted it with the examining attorney’s asserted consent).

In view thereof, the application is remanded to the Examining Attorney to issue an Office Action (without the six-month response clause) stating that the Examining Attorney did in fact consider the new evidence but found it

unpersuasive and continuing the final Section 2(d) refusal. However, if the Examining Attorney did not consider the new evidence when the application file was remanded on October 25, 2021, the Examining Attorney must do so now and issue an appropriate Office action.

Proceedings are otherwise suspended.